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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.455 OF 2003

IN

SUMM. SUIT NO.1206 OF 2003

M/s Alfa Transcore Inds .. Plaintiff

versus

M/s East India Udyog Ltd .. Defendant

...

Mr.S.Rajeshwar i/b Lega Apex for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 22nd March 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendant when called. This Summons for Judgment is taken out by the plaintiff for the recovery of the money due under 5 different cheques which were issued by the defendant for payment of the price of the goods sold, supplied and delivered.

2. The plaintiff sold, supplied and delivered to the defendant goods. A little over Rs.45,00,000/- was due and payable by the defendant to the plaintiff's group. Meeting was held between the parties on 18th January, 2000 under which the defendant agreed that an amount of Rs.45,42,411/- was due from him. It was also agreed that the value of one import consignment would be deducted and schedule of payment for the balance of the amount was to be given by the defendant to the

plaintiff. Thereafter, the defendant issued 6 post dated cheques as narrated in para 6 of the plaint to the plaintiff for total value of Rs.22,71,420.50. The cheques when presented for payment were dishonoured. The plaintiff has therefore filed this suit for recovery of the amount due under the said cheques. Though the defendant is absent at the time of hearing, it filed the affidavit in reply. I have perused the affidavit in reply and in my view the defendant has no defence of any substance.

3. In para 10 of the affidavit in reply, the defendant has admitted the minutes of the meeting held on 18th January, 2000. The said minutes clearly states that an amount little over Rs.45,00,000/- was due and payable by the defendant to the plaintiff's group on the date of the said meeting. In para 11, the defendant has admitted issuance of the cheque. However, he has contended that blank cheques were issued in the month of November, 1998. This defence is raised for the first time and was never raised in the correspondence earlier. Furthermore, if the blank cheques were issued, under section 20 of the Negotiable Instrument Act, the defendant is presumed to have given an authority to the plaintiff to fill in

the details in the said cheques. Under section 118 of the Negotiable Instrument Act, there is a presumption of consideration. That presumption is not rebutted by the defendant. In the circumstances, the defendant can only be granted conditional leave to defend the suit. Hence, I pass the following order :

" The defendant is granted conditional leave to defend the suit subject to its depositing a sum of Rs.20,00,000/- within eight weeks. On such deposit suit shall stand transferred to the list of commercial causes. The defendant shall then file the written statement within 10 weeks from today.

. In the event of the failure of the defendant to deposit the plaintiff shall have liberty to apply.

D.G.KARNIK, J